

EXHIBIT

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
SAINT-JEAN, et al., : 11-cv-2122 (SJ) (JO)
Plaintiff, :
 :
- versus - : U.S. Courthouse
 : Brooklyn, New York
EMIGRANT MORTGAGE CO., et al., :
Defendant : March 13, 2015
-----X

TRANSCRIPT OF CIVIL CAUSE FOR PRE-TRIAL CONFERENCE
BEFORE THE HONORABLE JAMES ORENSTEIN
UNITED STATES MAGISTRATE JUDGE

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1 THE CLERK: Civil Cause for Pre-Trial
2 Conference, Saint-Jean, et al. v. Emigrant Mortgage
3 Company, docket number 11-cv-2122.

4 Counsels, please state your appearances for the
5 record starting with the plaintiffs.

6 MR. SCHLACTUS: Good morning, your Honor.

7 Glen Schlactus from Relman, Dane & Colfax for
8 the plaintiffs and if I could just also note that seven
9 of our eight plaintiffs are with us today.

10 THE COURT: All right. Could you tell me who
11 is her?

12 MR. SCHLACTUS: We have Mr. and Mrs. Saintil.
13 We have --

14 THE COURT: Do you just want to identify
15 yourselves.

16 MR. SCHLACTUS: I'm sorry.

17 THE COURT: No need to get up. I just wanted
18 to know who you are. Okay, good morning.

19 MR. SCHLACTUS: We have Mr. Saint-Jean.

20 THE COURT: Good morning, sir.

21 MR. SCHLACTUS: Jeanette Small and Beverly
22 Small.

23 THE COURT: Good morning.

24 UNIDENTIFIED SPEAKER: Good morning.

25 MR. SCHLACTUS: Linda Commodore is here.

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1 THE COURT: Good morning.

2 MR. SCHLACTUS: And Mr. Felipe Howell is here,
3 as well, your Honor.

4 MR. HOWELL: Good morning.

5 THE COURT: Good morning.

6 THE COURT: All right. And with you at counsel
7 table?

8 MR. RELMAN: John Relman plaintiffs, your
9 Honor.

10 Good morning.

11 THE COURT: Good morning.

12 MS. GEBALLE: Rachel Geballe, South Brooklyn
13 Legal Services for the plaintiffs.

14 THE COURT: Good morning.

15 MS. GEBALLE: Good morning.

16 MS. MANAUGH: Good morning, your Honor.

17 Sarah Manaugh, South Brooklyn Legal Services
18 for the plaintiffs.

19 MR. SMYTH: Good morning, your Honor.

20 Tim Smyth from Relman, Dane & Colfax for
21 plaintiffs.

22 THE COURT: Good morning.

23 MS. SINTON: Good morning.

24 Jennifer Sinton, South Brooklyn Legal Services
25 for the plaintiffs.

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1 THE COURT: Good morning.

2 MS. WU: Good morning.

3 Yiyang Wu, Relman, Dane & Colfax for the
4 plaintiffs.

5 THE COURT: Good morning.

6 MS. ROBERTSON: Good morning.

7 Ayana Robertson, South Brooklyn Legal Services
8 for the plaintiffs.

9 THE COURT: Good morning.

10 MS. PLEVAN: It's Bettina Plevan of Proskauer
11 Rose for the defendants.

12 THE COURT: Good morning.

13 MR. GIGANTE: Evandro Gigante, Proskauer Rose
14 for the defendants.

15 THE COURT: Good morning.

16 MR. SCHEFFEL: David Scheffel, Dorsey &
17 Whitney.

18 Good morning.

19 MR. TRAIGER: Good morning.

20 Warren Traiger, Buckley Sandler for plaintiffs
21 (sic).

22 THE COURT: Good morning.

23 MR. TRAIGER: Defendants.

24 THE COURT: All right, folks. We've got just a
25 housekeeping matter. Oh, Mr. Traiger, are you on the

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1 docket? I don't know that I have you there. If you're
2 not, would you file a notice of appearance please.

3 MR. TRAIGER: I am not on the docket.

4 THE COURT: Okay. Would you file a notice of
5 appearance, please? How do you spell your name?

6 MR. TRAIGER: T-R-A-I-G-E-R, first name Warren.

7 THE COURT: Warren?

8 MR. TRAIGER: Yes.

9 THE COURT: Okay. All right, folks. All
10 right. So we've got a number of discovery motions. I'll
11 just take them in the order that they're on the docket.
12 Document 302 is the plaintiffs' motion to quash the
13 subpoena to JPMorgan Chase. We've got a lot folks. I
14 don't -- I'll hear you all if you want to be heard. I'm
15 more than happy to just rule based on what you've told me
16 with respect to these motions already but I don't want to
17 deny folks an opportunity to be heard, if you wish to add
18 something to your papers. Please just don't go over
19 what's already in them.

20 Do the plaintiffs wish to be heard on the
21 motion to quash the motion to Morgan -- to Chase, I
22 suppose?

23 UNIDENTIFIED SPEAKER: Yes, your Honor. We can
24 maybe just present our argument on --

25 THE CLERK: Please state your name for the

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1 record.

2 THE COURT: Yes, we've got so many people and
3 we're doing an audio recording, so just when you rise --

4 MS. MANAUGH: Yes, your Honor. Sarah Manaugh,
5 South Brooklyn Legal Services.

6 There are two related motions to quash.

7 THE COURT: Yes.

8 MS. MANAUGH: So I could --

9 THE COURT: If you want to address both -- and
10 the other one is 310 on the docket and that's to quash
11 the motion -- the subpoena to Wells Fargo.

12 MS. MANAUGH: Yes, your Honor. I just wanted
13 to make a couple of small points with respect to these
14 two motions. The subpoenas are related. They pertain to
15 the same mortgage which we understand was originated in
16 2001, was satisfied in 2008. The defendants have sought
17 information and documentation on the same mortgage from
18 JPMorgan Chase and Wells. From their papers, we
19 understand that there was actually a subpoena served on
20 Wells Fargo prior to the close of the first discovery
21 period and there was a problem with service and
22 subsequently, there was no follow-up on that.

23 This seems to me to be particularly relevant to
24 their efforts now to submit documentation, fourteen
25 months after the close of that first discovery period.

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1 There was no effort to find some -- what they regard as
2 more powerful documentation and information than the
3 testimony that they got from Mr. and Mrs. Sant-Jean,
4 which they concede should have been sought, given that
5 that documentation would likely be more compelling and
6 more reliable than deposition testimony from many years
7 after the mortgage was actually satisfied.

8 THE COURT: All right. Thank you. Who wishes
9 to be heard? Mr. Gigante?

10 MR. GIGANTE: Yes, your Honor. With respect to
11 both of these subpoenas which Ms. Manaugh's correct,
12 they're related, the fact is that Mrs. Saint-Jean
13 testified in January of this year that she really had
14 very little recollection, if any, that either of these
15 two mortgages --

16 THE COURT: And before that testimony, you had
17 no reason to be thinking you might want those documents?

18 MR. GIGANTE: We had reason to believe, your
19 Honor -- well, obviously in the record, the documents
20 that we had to date reflect that there were mortgages to
21 these individual loans, meaning Wells Fargo and
22 Washington Mutual.

23 THE COURT: And you knew you wanted to question
24 her about those, right?

25 MR. GIGANTE: Absolutely, your Honor, and --

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1 THE COURT: And is there some reason why,
2 unlike most lawyers in most comparable circumstances,
3 didn't get the documents about which you wanted the
4 witness to testify in advance of the deposition, so that
5 you could ask her about them at the deposition?

6 MR. GIGANTE: Well, with respect to wells
7 Fargo, your Honor, we did try to do that. However, as
8 Ms. Manaugh noted, the subpoena was not properly -- was
9 not -- there was address information that made it unable
10 to get that information. So we actually thought that we
11 would get information from Mrs. Saint-Jean. She told us
12 at deposition that she didn't have much recollection
13 about either of those two loans, didn't even realize that
14 one of them had gone to foreclosure. She acknowledged in
15 her deposition in January of this year that she had
16 destroyed documents about her prior mortgages, and so
17 that she didn't have those anymore.

18 And after that, we made a -- we issued a
19 subpoena to obtain those documents. Those documents that
20 would tell the complete story of what those loans were,
21 what the terms of the loans were, how much in arrears the
22 plaintiffs had been in those loans and that's not
23 information that we had from any of the other sources
24 that we received earlier, including credit reports and
25 settlement statements and at the Emigrant closing. And

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1 so therefore, we feel that those are the compelling
2 circumstances that are warranted in order to obtain those
3 documents now.

4 Frankly, had we had the information from Mrs.
5 Saint-Jean, we may not have needed these documents but
6 Mrs. Saint-Jean was not able to provide that information,
7 seemed to not have any clear recollection about those two
8 loans whatsoever and so upon completing that deposition,
9 we realized that we should seek those documents from
10 other sources.

11 THE COURT: Thank you, sir. The motions are
12 both granted. There's no good cause for seeking this
13 discovery after the applicable deadline.

14 Let's move on next to document 307. It sounds
15 like a request to have a pre-motion conference in advance
16 of a motion to quash the subpoenas to counsel but I take
17 it what the plaintiffs are seeking is to quash the
18 subpoenas, correct?

19 MR. SCHLACTUS: That's right, your Honor.

20 THE COURT: Okay. Do you want to be heard on
21 that?

22 MR. SCHLACTUS: Certainly, your Honor. Glenn
23 Schlactus for the plaintiffs.

24 We, as your Honor said, have filed a pre-motion
25 letter request for the conference and we are prepared to

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1 brief this in full, if and when it is --

2 THE COURT: Is there any reason we can't
3 resolve this today?

4 MR. SCHLACTUS: Well, your Honor, it these are
5 very, very serious subpoenas. We do want to make sure
6 that before they go forward, we have an opportunity to
7 really lay out our arguments in full. But let me -- if
8 the Court is prepared to rule, the Court is prepared to
9 rule and if I could briefly --

10 THE COURT: Is there something substantive that
11 you think I -- that isn't already raised, so that I can
12 decide it on the merits?

13 MR. SCHLACTUS: The key arguments are already
14 there on the papers --

15 THE COURT: All right.

16 MR. SCHLACTUS: -- absolutely.

17 THE COURT: All right.

18 MR. SCHLACTUS: It would just be a question of
19 elaborating.

20 THE COURT: If you don't feel you're in a
21 position to have me consider your argument today, that's
22 fine. You know, I don't want to deprive either side of
23 that.

24 MR. SCHLACTUS: Let's go ahead and address it
25 today, your Honor.

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1 THE COURT: Okay.

2 MR. SCHLACTUS: The -- Emigrant tries to frame
3 these subpoenas as being about the statute of limitations
4 and I'd like to explain why that's just not right. We
5 think there are a few key facts that demonstrate that
6 they are about -- the subpoenas are about an improper
7 purpose that we would submit is actually sanctionable.

8 Contrary to -- well, first of all, contrary to
9 what the defendants have suggested in their letter, the
10 plaintiffs were able and allowed by counsel to testify in
11 their depositions in full about when they learned that
12 discrimination may have been a factor in their loans and
13 that's really the key inquiry with respect to the
14 limitations defense that has been raised. Those
15 questions were asked and those questions were answered.

16 What we instructed the plaintiffs not to answer
17 questions about were the details of their conversations
18 with us, their lawyers, in 2013. If defendants really
19 thought that they needed more information about those
20 conversations, they ought to have filed a motion to
21 compel and they simply did not and I think that is a very
22 salient fact here. Instead, they cut straight to filing
23 what are, I would submit, truly extraordinary subpoenas
24 that would work an extraordinary invasion of privilege.
25 They're asking to depose lawyers. They're asking for a

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1 range of documents, e-mails, drafts of meetings, billing
2 records and more.

3 Couple that with the timing, the timing was
4 right as we were trying to reach the end of discovery,
5 obviously a whole lot of work on the table. It was only
6 two days after we had sat in this courtroom and told the
7 Court that we were concerned about our ability to
8 properly prepare for Mr. Milstein's deposition in light
9 of the forthcoming production of documents that the Court
10 had reviewed in camera and had determined were improperly
11 withheld.

12 Also, with respect --

13 THE COURT: Just a point of information, that
14 deposition has been completed?

15 MR. SCHLACTUS: I'm sorry? That deposition has
16 been completed. Yes, your Honor.

17 THE COURT: I'm sorry to interrupt.

18 MR. SCHLACTUS: Not at all.

19 Also with respect to timing, the subpoenas came
20 to us just in the early hours after defense counsel
21 raised another false ethics accusation against us, namely
22 that we had -- suggesting that we had improperly
23 solicited for the four-most recently added plaintiffs.

24 Couple that with what I would submit is just
25 the straightforward logical irrelevance to the statute of

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1 limitations question, what matters is here for the
2 limitations inquiry is what did the plaintiffs know, what
3 did they suspect if anything, with respect to
4 discrimination, as of November 15th, 2011, two years
5 before coming to the Court.

6 What we may have said to them in our meetings
7 in 2013 or subsequent to that, just can have no bearing
8 on what they knew by November 15th of 2011.

9 The conclusion that we draw from those facts is
10 that the subpoenas were issued in an attempt to obstruct
11 counsel from dutifully representing their clients and in
12 an attempt to fish for fodder for the latest ethics
13 accusation that had been raised just hours before. We
14 think those purposes are improper. I think that really
15 gets to the nut of it.

16 THE COURT: Okay. Thank you.

17 Ms. Plevan?

18 MS. PLEVAN: Thank you, your Honor. The
19 plaintiffs introduced this subject of these conversations
20 in their complaint. Each of the -- other than the Saint-
21 Jeans, each of the plaintiffs --

22 THE COURT: I've read the complaint. Go ahead.

23 MS. PLEVAN: Right -- makes an allegation
24 about --

25 THE COURT: I've read the complaint. Go onto

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1 your next point, please.

2 MS. PLEVAN: Yes, your Honor. And that opens
3 us for discovery, the subject matter of those
4 conversations. We've submitted the records all but one
5 deposition which took place after the --

6 THE COURT: I've read them. Go onto your next
7 point, please.

8 MS. PLEVAN: The depositions show that the
9 plaintiffs do not recall in all instances, when the
10 conversations took place.

11 THE COURT: What do you anticipate the -- if
12 you had this conversation, what might they reveal they
13 were told at the time of their first discussion with
14 counsel that would inform the motion to dismiss on the
15 basis of the statute of limitations, given that they're
16 saying they did find out at that point that they had a
17 claim and to prevail on such a motion, you would have to
18 say no, they actually knew something earlier.

19 So what would you find out in these -- by
20 inquiring into these conversations, about what had
21 happened earlier that would allow you to prevail on such
22 a motion?

23 MS. PLEVAN: I think what I would -- I would
24 take as slightly different tack, your Honor, and say
25 that --

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1 THE COURT: Well, don't take a different tack,
2 answer my question please, Ms. Plevan.

3 MS. PLEVAN: No, no.

4 THE COURT: What would you find out about what
5 had happened earlier?

6 MS. PLEVAN: Well, I think --

7 THE COURT: Nothing, right?

8 MS. PLEVAN: I have a different legal argument
9 that I would like to advance.

10 THE COURT: I will hear it in a moment but if
11 you would have the courtesy, please, to answer my
12 question, I take it that you would learn nothing about
13 anything that had happened before the date of that
14 conversation, correct?

15 MS. PLEVAN: I would only learn what was said
16 in that conversation.

17 THE COURT: So it's correct that you would not
18 learn anything about what had happened earlier, is that
19 right?

20 MS. PLEVAN: Well, I don't know because until I
21 hear what the conversation --

22 THE COURT: So you think --

23 MS. PLEVAN: -- was but I don't --

24 THE COURT: -- so wait, you think it's a
25 possibility that they would tell you that here's what I

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1 talked about with my lawyer and that's why I know that
2 earlier I knew something else.

3 MS. PLEVAN: They might say it was the first
4 time they heard something or that they had heard it
5 before.

6 THE COURT: Go ahead. You wanted to make a
7 different legal argument. Go ahead. By all means.

8 MS. PLEVAN: Well, I don't know if it's a
9 different legal argument but I think the point is that we
10 would learn -- first of all, we would learn the date, if
11 they had notes or time sheets or records of the call.
12 Many of the plaintiffs didn't remember the date. They've
13 made an allegation about a date but they haven't, for the
14 most part -- they have no -- I shouldn't say for the most
15 part, none of them had any records themselves of the
16 date. The lawyers certainly will have a record of the
17 date, I would think. And the date is important to the
18 tolling argument.

19 The second point is that if the records or
20 information about what was said in that conversation can
21 be shown to be nothing new, in other words, that what
22 they heard in that conversation was something they
23 already knew, then I think that that defeats the tolling
24 argument. That's what we're seeking in this aspect of
25 discovery.

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1 THE COURT: Anything else you would like me to
2 consider on this --

3 MS. PLEVAN: Uhm.

4 THE COURT: -- other than what's in your
5 letter?

6 MS. PLEVAN: I think we've made the point, as
7 well, about waiver. I don't think I need to repeat that
8 but I do think, your Honor, that --

9 THE COURT: Best not to, I think.

10 MS. PLEVAN: -- this is a critical issue in the
11 case and to not permit us to have some discovery on this
12 point is tying our hands and that we should be permitted
13 to at least have some discovery of nonprivileged -- we
14 can defer the issue of waiver and have them produce
15 nonprivileged information at this stage.

16 THE COURT: I think the only issue we'll defer
17 is the issue of sanctions. I'll ask you folks to set a
18 briefing schedule on that.

19 The motions are quashed. There's nothing
20 appropriate that can be sought in these subpoenas and to
21 the extent that there's arguably something that could be
22 obtained from other sources, that is needlessly
23 burdensome and duplicative, the law clearly disfavors
24 these kinds of depositions.

25 MS. PLEVAN: But, your Honor, we've also --

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1 THE COURT: Excuse me. So the motion to quash
2 the subpoena in each instance is granted. Please submit
3 a proposed briefing schedule on the request for sanctions
4 within one week.

5 Yes, Ms. Plevan, you wanted to ask something?

6 MS. PLEVAN: I just wanted to be clear, we were
7 asking for documents, including time records. It was not
8 just depositions --

9 THE COURT: The subpoenas directed to the
10 plaintiffs' counsel which should never have been issued,
11 and I will say nothing further until I've read the
12 briefing on the motion for sanctions, the motions -- I'm
13 sorry, the subpoenas are quashed in their entirety.

14 MS. PLEVAN: Okay.

15 THE COURT: And I'll have the briefing schedule
16 on the motion for sanctions -- what's today -- by March
17 20th.

18 Number 311, defendants' motion to reopen
19 depositions and produce documents with respect to Mr.
20 Howell, Ms. Small and Ms. Saint-Jean, this relates to
21 after obtained medical records. Yes, Mr. Gigante?

22 MR. GIGANTE: Yes, your Honor. There have been
23 some slight sort of changes in the facts since the
24 motions were filed -- the motion was filed but I will
25 start with -- I'll go through those for your Honor.

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1 The first individual I would like to discuss,
2 is Mr. Howell. Mr. Howell, your Honor, provided
3 testimony with regard to his diabetes and the onset of
4 his diabetes, the alleged worsening of the diabetes which
5 he attributed to the stress associated with his loan.

6 Following his deposition, we received documents
7 that suggested otherwise and we believe that we should
8 have the opportunity and I think it would be very short,
9 in order to question him based on those documents.

10 THE COURT: When did you seek his records?

11 MR. GIGANTE: We seeked (sic) the records on
12 January 31st, your Honor.

13 THE COURT: You sought them on January 31st?

14 MR. GIGANTE: That's correct.

15 THE COURT: When was his deposition?

16 MR. GIGANTE: Deposition took place on January
17 29th.

18 UNIDENTIFIED SPEAKER: Your Honor, just so the
19 record is clear, I believe they were requested on
20 December 31st --

21 MR. GIGANTE: I misspoke.

22 UNIDENTIFIED SPEAKER: -- and that -- go ahead,
23 Mr. Gigante.

24 MR. GIGANTE: I misspoke. December 31st we
25 sought the records. The deposition was on January 29th.

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1 THE COURT: So you knew you had requested them
2 and had not received them and you went forward with the
3 deposition?

4 MR. GIGANTE: That's correct, your Honor.

5 THE COURT: All right. There are comparable
6 facts for each of the others, correct?

7 MR. GIGANTE: Yes, except that, your Honor, for
8 Mr. Howell, for Ms. Small, we are still receiving
9 documents to this day and --

10 THE COURT: Right, but you knew going into each
11 deposition that you had records that you were looking for
12 and went ahead with the deposition rather than saying
13 could we reschedule this until after we get the records,
14 correct?

15 MR. GIGANTE: Yes, your Honor.

16 THE COURT: Okay.

17 MR. GIGANTE: In part that's --

18 THE COURT: The motion is denied.

19 Number 314, defendants' motion to compel tax
20 returns, do you wish to be heard on that? Again --

21 MS. PLEVAN: I'll just say two things, your
22 Honor. The plaintiffs don't dispute the relevance of
23 these documents and they don't claim that they're
24 burdensome. And if we're going to have proceedings in
25 this case, they go forward to trial, these are documents

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1 that we think are pertinent and would be admissible.

2 THE COURT: Well, when did you start thinking
3 that?

4 MS. PLEVAN: I think these -- well, the --

5 THE COURT: Because I mean the reference to the
6 tax returns has been in the case since its inception, no?

7 MS. PLEVAN: I think it has been --

8 THE COURT: Okay.

9 MS. PLEVAN: -- because it's been in their
10 complaint.

11 THE COURT: The --

12 MS. PLEVAN: And I am not --

13 THE COURT: The motion is --

14 MS. PLEVAN: If we're going to have --

15 THE COURT: -- once again denied. Have a seat,
16 please.

17 Number 315, the plaintiffs' motion to compel
18 information about the agency relationship.

19 MR. SCHLACTUS: Yes, just very briefly, your
20 Honor. This is Glenn Schlactus for plaintiffs.

21 A couple of quick points in response to what
22 was raised in the opposition letter. First, this is a
23 very modest request. We're not looking to have a parade
24 of witnesses on this discrete topic for a full day or
25 more or anything like that. I think this can be

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1 accomplished quite easily in half-a-day. I would suspect
2 one witness can do it. I guess that's defendants' choice
3 but I would suspect --

4 THE COURT: You know, just -- and this is an
5 approach that I've brought to bear on the other side, as
6 well, even a small amount of improper discovery is still
7 improper. Have you pleaded this theory of agency?

8 MR. SCHLACTUS: Yes, your Honor, I think we
9 did. We did not use specific legal -- that specific
10 legal terminology but nor are we required to. I think
11 the Second Circuit is clear that we don't have to use the
12 so-called magic words.

13 Moreover, I think the defendants --

14 THE COURT: Well, magic or otherwise --

15 MR. SCHLACTUS: -- are under --

16 THE COURT: -- what words did you use?

17 MR. SCHLACTUS: So at the most fundamental
18 level, we alleged that Emigrant Mortgage Company, the
19 original defendant, made these loans and that the new
20 defendants were liable for them. I think that
21 immediately brings up --

22 THE COURT: Because they participated in it in
23 your allegations, no?

24 MR. SCHLACTUS: Well, we did not say that they
25 were making the loan in I think the sense of

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1 participation that you're using. We said they were
2 liable for them. And I think defendants understood -- I
3 mean, we talked about the influence and control that the
4 parent companies had over the mortgage company and the
5 common operation and I think the submission that
6 defendants made to the Court in 2012 made clear that they
7 understood that we were alleging this kind of theory.

8 In opposing our motion to amend, Emigrant's --
9 defendants made the argument that it would be futile to
10 add new defendants because the claims against Emigrant
11 Mortgage Company were not viable and the claims against
12 the proposed new defendants were "derivative."

13 And I think that use of -- that's the common
14 sense -- the common usage of that mean -- of that word
15 derivative in this context is indirect liability. I
16 think they understood from the outset. I think that was
17 a proper understanding.

18 THE COURT: Why haven't I heard about this
19 before, particularly when I asked about what additional
20 discovery you would be seeking back in November?

21 MR. SCHLACTUS: Your Honor, November we told
22 the Court that we did not expect to need much discovery
23 from the defendants and we have been acting consistent
24 with that but we did not say there would not be any. We
25 indicated that the --

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1 THE COURT: But I asked you what you would be
2 seeking, right?

3 MR. SCHLACTUS: You did and --

4 THE COURT: And you had no reason not to tell
5 me about this then, right?

6 MR. SCHLACTUS: Your Honor, we hadn't served
7 the discovery request.

8 THE COURT: Of course you hadn't served but you
9 didn't have any reason not to tell me about it then.

10 MR. SCHLACTUS: That's right, your Honor. I
11 don't think the --

12 THE COURT: Okay. The motion is denied.

13 One other discovery-related issue. We went
14 over the redactions and privilege assertions and there
15 was one item that I wanted some follow-up about, I wanted
16 to get from the defendants, the communications from
17 Thacher Proffitt to the vendor that provided the
18 methodology to be used to aggregate their data. I was
19 given a lot of information after that but none of it was
20 any communication from Thacher Profitt to PBS providing
21 the methodology.

22 Have I misunderstood what was provided because
23 I -- or did I miss something? I simply did not see any
24 communication of the methodology from Thacher Profitt to
25 PBS.

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1 MS. PLEVAN: I think the reference is --
2 there's a report from PBS to Thacher Proffitt --

3 THE COURT: Yes.

4 MS. PLEVAN: -- that cites --

5 THE COURT: I saw that, which says, you know,
6 here's what we did but I asked you for something from
7 Thacher Proffitt to PBS that would show this was, in
8 fact, their work product and you haven't provided that.
9 Now if I've missed something, that's fine. If you have
10 inadvertently left something out of what I asked you to
11 provide, that's also fine and I'll give you an
12 opportunity to provide it.

13 But if I don't have something that conforms
14 with what I directed you to provide by Monday, I will
15 direct you to provide the materials that were at issue in
16 that request.

17 MS. PLEVAN: I don't know --

18 THE COURT: The spreadsheets.

19 MS. PLEVAN: We'll check, your Honor. I am not
20 -- I don't know if there was another letter there that
21 went from the firm. There is another firm and there's --

22 THE COURT: Well, I was told Thacher Proffitt.

23 UNIDENTIFIED SPEAKER: Your Honor, if we --

24 THE COURT: So if by Monday, you send me the
25 communication from Thacher Proffitt to PBS that provides

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1 the methodology, we'll leave things as they are.
2 Otherwise, I'll direct you to provide the spreadsheets
3 containing the aggregated lending data that were referred
4 to in the log entries, 141 and 2142 through 2151.

5 MR. SCHEFFEL: Your Honor, this is David
6 Scheffel.

7 If I could just briefly note, Exhibit B in the
8 submissions that were sent to your Honor, there is the
9 PBS report which --

10 THE COURT: Yes, I --

11 MR. SCHEFFEL: -- will be noted.

12 THE COURT: Ms. Plevan just referenced that and
13 I read it and it doesn't have the communication from
14 Thacher Proffitt saying here's what the -- here's the
15 methodology that we would like you to use.

16 Look, the question is, is this something that
17 was counsel's work product or not? And right now, I
18 don't have a basis to say that it was.

19 MS. PLEVAN: Understood.

20 THE COURT: All right. Okay. Is there any
21 other outstanding discovery issues? All right. So
22 discovery is closed.

23 UNIDENTIFIED SPEAKER: Your Honor?

24 THE COURT: Yes.

25 UNIDENTIFIED SPEAKER: Sorry to interrupt, I

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1 believe there's one deposition of Dr. Geller (ph.),
2 right, that is to be finished off.

3 UNIDENTIFIED SPEAKER: Dr. Lu (ph.)

4 UNIDENTIFIED SPEAKER: I'm sorry, Dr. Lu (ph.).

5 THE COURT: You've agreed on the schedule?

6 UNIDENTIFIED SPEAKER: Yes, we've agreed on it.
7 Yes, I just wanted it to be noted.

8 THE COURT: That's fine. Okay. All right. So
9 let me look at the schedule here. So I assume none of us
10 would be lucky enough to believe that we're not going to
11 have significant summary judgment motion practice.

12 MS. PLEVAN: We do plan to seek --

13 THE COURT: You anticipate motion --

14 MS. PLEVAN: -- permission to do that.

15 THE COURT: Yeah, okay. So you'll get your
16 letter in for a pre-motion conference by March 30th. Is
17 there going to be any comparable motion practice on the
18 plaintiffs' side?

19 MR. SCHLACTUS: We do not anticipate that, your
20 Honor.

21 THE COURT: Okay.

22 MS. PLEVAN: Your Honor, we did raise at the
23 last -- earlier -- one of the earlier pre-trial
24 conferences, the pendency of the case in the Supreme
25 Court and how that might affect the timing, the Texas

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1 housing cases. It was argued in January and has not yet
2 been decided and it's one of the critical issues that the
3 -- of the plaintiffs' complaint that could impact
4 (indiscernible) at the time we decided to postpone the
5 question of whether to -- how to deal with that in the
6 briefing schedule.

7 THE COURT: Uh-hum.

8 MS. PLEVAN: And I know that the schedule is
9 set forth in your Honor's order. We could raise this
10 with Judge Johnson when we submit the letter but I want
11 to bring to your attention --

12 THE COURT: Yeah. No, I think that makes sense
13 to raise it with him. You know, we can all anticipate
14 you'll have a decision by June --

15 MS. PLEVAN: We should.

16 THE COURT: -- right, okay, as well.

17 MR. RELMAN: Your Honor, John Relman. If I
18 could just note, this case involves ECOA claims and
19 there's nothing in the Supreme Court in the Texas case
20 that has anything to do with ECOA as to the Fair Housing
21 Act.

22 THE COURT: Yes, look, there are any number of
23 ways -- and we don't need to resolve here today the
24 merits of how closely or not that case relates to this
25 one but you raise it in your letters to Judge Johnson and

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1 there are any number of ways you could accommodate it in
2 the briefing schedule, including by, you know, just
3 providing for supplemental briefing once the decision is
4 out.

5 MR. RELMAN: Understood, your Honor.

6 THE COURT: All right. Okay. And you have a
7 joint pre-trial order due by -- I just had it here --

8 MR. SCHLACTUS: I believe that's May 5th, your
9 Honor.

10 THE COURT: May 4th.

11 MR. SCHLACTUS: May 4th, I'm sorry. And I
12 think we had previously agreed to ask Judge Johnson to
13 let us hold off on that.

14 THE COURT: Right. I think it makes sense but
15 ultimately, it's Judge Johnson's decision.

16 Okay. Anything else before the remaining two
17 items, which is have an off the record discussion
18 concerning settlement and then send the case onto Judge
19 Johnson for a motions and trial? Anything else anyone
20 thought we should take up here?

21 MR. SCHLACTUS: Not from plaintiffs, your
22 Honor.

23 THE COURT: No? On defense side, nothing?
24 Okay.

25 With respect to settlement, I appreciate the

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1 submissions you've made on both sides. I am more than
2 happy to spend time with all of you trying to settle a
3 case if we can and do it today. We can do it some other
4 time, if you prefer. But I will tell you after reviewing
5 your submissions, it seems a virtual impossibility that
6 we're going to achieve a settlement. I don't know if
7 you've had any discussions with each other about this.
8 Have you?

9 MR. RELMAN: Your Honor, John Relman. We have
10 not. And I would say, your Honor, having spent a full
11 day with Mr. Milstein, who I understand would be the
12 decision-maker on any settlement, and knowing what I know
13 about the position that the defendants have taken all
14 along, and knowing as you know from our letter, our views
15 about the case, the extraordinary nature of the
16 practices, what we think the costs have been to our
17 clients and the broader implications of the case, with
18 all due respect -- I usually am an optimist and trying
19 settlement and in my experience is something that I think
20 is very, very important to do, I've had some reasonable
21 success in settling cases over the years -- I have to say
22 based on my experience and all due respect, I'm not
23 optimistic in this situation about being able to resolve
24 this case at this time.

25 I have not seen their submission, of course,

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1 but I believe there probably is a very wide gulf and I
2 think based on my deposing of Mr. Milstein that there is
3 a very, very different view about this case. And
4 frankly, I believe this is a case that very likely -- I
5 mean, I am always open to discussing settlement at any
6 point in any case to save the resources of the Court but
7 this may be one that just has to go to trial.

8 THE COURT: Ms. Plevan, do you have a view on
9 that?

10 MS. PLEVAN: I'm not sure what Mr. Relman is
11 saying but, you know, if there are among the plaintiffs
12 people who want to talk, we'll be happy to do that. And
13 there are, as you know, two sets of plaintiffs who have
14 homes in foreclosure and that's a situation that can be
15 discussed and could be the basis for resolution.

16 THE COURT: Well --

17 MS. PLEVAN: And I don't know. You know, I
18 think it -- I agree that for a number of reasons, it's
19 unlikely that all the claims would be settled but there
20 are five plaintiffs, (indiscernible) the plaintiffs, and
21 I certainly hope they each have an opportunity to think
22 about that for themselves.

23 THE COURT: I'm sure they do, assisted by
24 counsel. All right. Well, let me suggest this, if
25 nobody -- unless anybody objects, I would like to go off

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1 the record very briefly because there's sometimes I would
2 say, just to sort of characterize what I've said, I don't
3 want to delve into ex parte submissions but I think to
4 the extent I want to, you can characterize what I've
5 gotten in the ex parte settlement submissions are better
6 done off the record. Any objections to doing that?

7 MR. RELMAN: No objection, your Honor.

8 MS. PLEVAN: I'm happy to go off the record.

9 THE COURT: Okay. So let's go off the record.

10 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 19th day of March, 2015.


Linda Ferrara

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